EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY	)	CA 04-01592
	)	Boston, MA
PATENT LITIGATION, ET AL	)	October 6, 2004
	)	
	)	

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

(As previously noted.)

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case or controversy. And there are two aspects of those -- of those cases that I would point to and which, I think, distinguish this case. One aspect is that in those cases and in Spectronics itself, the issue was presented and argued as to whether the potential grant of a reissued patent placed the declaratory judgment plaintiff at risk. And this is, of course, in a context in which I think we all understand the degree of adversity, the degree to which we have reason to expect that if Columbia can get a patent out of this --

THE COURT: Let me just go back to my question.

(Short pause.)

MR. GINDLER: I think you're thinking of GAF Building.

THE COURT: Maybe.

MR. WARE: There's discussion of that in Spectronics.

THE COURT: I know there is. Hold on just a minute.

(Short pause.)

THE COURT: GAF Building and Spectronics. Just so I understand you, Mr. Ware, you're going to distinguish the cases that have been decided, but you're not going to point me to a case where a case or controversy was found in a situation where no patent had

issued and there wasn't a question of a possible relation back that would create exposure or damages for present activity.

MR. WARE: I think that's correct because I think none of the cases have involved two factors which are present here. But if I could say something about Spectronics. Spectronics -- the court in Spectronics did note that there was no guarantee that the reissued patent would reissue, but the court did not rest its decision on that point but, rather, made an alternative decision and said that --

THE COURT: What page are you on?

MR. WARE: I'm on -- it's page 5 of the Westlaw, but I can't find -- 636, looks like, must be towards the bottom of 636. And the paragraph itself begins: There is, however.

THE COURT: Okay.

MR. WARE: And then it goes on. It says: Furthermore, even if Spectronics had an objectively reasonable apprehension about future suit based upon the reissued patent, we would be compelled to affirm the dismissal because --

THE COURT: Keep reading. That's exactly the key point, where you stopped.

MR. WARE: So here's the point that I wanted to

make. What they're talking about is they couldn't tell whether something was potentially infringing because the defense that was raised in the Spectronics case was a non-infringement defense. And that makes perfect sense. If the patent hasn't issued, you don't know what the claim is, so you don't know whether you have present activity within the scope of that claim. That's because it's a non-infringement defense.

We have in this case other -- another defense, prosecution laches. Prosecution laches is a defense that is completely unrelated to the scope of the claims that come out of a future patent. If we are correct, that prosecution laches prevents the enforcement of the '275 patent, it prevents the enforcement of any other patent, future patent, in that family. That factor was not present in any of the cases. So that there was always a problem in needing to know exactly what the claim language would be. And I think that this language in Spectronics actually reflects a recognition that the party could have an objectively reasonable apprehension about a future suit, in general. But the problem here was that they couldn't know whether it would cover their activity.

So they were not allowed to bring their non-infringement declaratory judgment action. They did

not have prosecution laches. There are no cases in this line of cases that deal with prosecution laches, which is a defense that has been flushed out fairly recently by the Federal Circuit.

So our point is that we don't need to know what the claims of the future patent are to be able to maintain and seek a declaratory judgment on prosecution laches.

THE COURT: All right. But what about the implications of what came next? Because it says -- first, you'd have to persuade me that in view of this representation, covenant, that you have an objectively reasonable apprehension of a future suit based on the reissued patent. That would be, at a minimum, necessary. But then it says: We would be compelled to affirm the District Court's dismissal because Spectronics did not demonstrate that its present activity is potentially infringing any patent claim since it is immune to suit under the claims of '366 patent, and no reissued patent claims yet exist by which infringement vel non -- I could never understand vel non -- can be measured.

But as a practical matter, right now, you have -- your clients have no exposure -- your clients are never going to have to pay damages for anything they're doing now. The problem here -- in this industry -- and

they're going to talk about this in the state decision. You know, I think you've educated me to understand that some of the issues that might exist in other cases, you know, are big for the drug companies here. But it's not the potential that you're going to owe Columbia money for anything you're doing now. It's the potential that you're going to invest, and then maybe new claims will come out, and maybe it will turn out that you'll have to change what you're doing when those new claims come out or pay them royalties.

MR. WARE: In this case, unlike in Spectronics, however, we do have the set of reissue claims, and we know they're very broad claims. We also have the set of claims in the '159 application. So that was a distinction.

THE COURT: How do you know what claims are going to emerge?

MR. WARE: There were no claims even to look at, I think, in the Spectronics --

THE COURT: Where does it tell you that?

MR. WARE: It says: No reissued patent claims yet exist. I read that as referring to not even being able to look at an application.

THE COURT: If you read the next sentence, it says: There are sensible reasons why the existence of

issued patent claims presently, meaning now, enforceable at Spectronics are a requisite for litigation of a declaratory judgment action.

So, if that language that I just read represents the law, you haven't met that requisite.

MR. WARE: Well, I would suggest that it is a factual -- that the question is one that turns on the facts in particular cases. And if because -- the focus there is, well, you just have no idea if you're going to be covered by these claims. Well, we know from what the nature of these claims are -- they're claiming cotransformation of CHO cells. They can put different words into the claims here and there, but I don't think that anybody has any doubt that these claims are going to be directed at what the plaintiffs do.

THE COURT: Let me ask you this. In your view, if there's a reissuance with whatever claim you say you've read, would that be impermissible double patenting?

MR. WARE: Well, since we think all of these claims are impermissible double patenting over the earlier patents, in all likelihood, we would think that.

THE COURT: Okay. And you think that at least in part based on the evidence that you gave me in the preliminary injunction, right?

appellees: Because Spectronics has been absolved from liability on all the claims of the '366 patent, there will be no future confrontation with respect to them.

THE COURT: Now, again, this isn't rhetorical, and I apologize if I'm misunderstanding or misstating anything, but that's what I think Mr. Gindler told you your immunity is. It's only if there is a new claim that emerges, something that is not the same or substantially the same as the existing '275 claims, that your clients can have any liability even after -- I guess at the moment I'm putting aside the '159 -- but with regard to the '275. Did you understand the representation the way I just described it?

MR. HASSON: Your Honor, I should have been clearer. I was addressing exactly the '159. That was my intent. The reason that Spectronics is distinguishable in this regard is that there was a substantive admission of non-infringement with regard to the claims that had been stated in that patent. That would carry forward to those claims wherever they might emerge and under whatever number.

THE COURT: So your point is -- let me just see if I've got it. To the extent -- see, I don't have the '159 and the '275 in front of me. You say there are some identical claims -- some claims in the '159 that are

due, independent of the '275 application or '275 patent.

THE COURT: For the foreign patents?

MR. HASSON: I'm sorry.

THE COURT: For foreign patents?

MR. HASSON: No, your Honor. Columbia takes the position that some additional funds are owed by my clients having to do with some of the patents that expired in the year 2000.

THE COURT: Okay. Well, when he gets his turn to respond to all of this, Mr. Gindler will tell me why Amgen has got nothing to worry about.

MR. HASSON: Thank you, your Honor.

THE COURT: Except for anything they owed back in 2000.

Is there anybody else who would like to be heard?

MS. PRUETZ: Yes, your Honor, Adrien Pruetz for Genentech. I don't think I have anything to add to the argument that's been made on the '159. I think, though, that focusing on the language in Spectronics that Mr. Hasson pointed out to the court, the fact that in Spectronics the accused party was free of ever having to deal with a patent arising out of the invention claimed in the patent is not the situation here. And, for that reason, I think Mr. Ware argued that this court has

jurisdiction and should exercise it to go forward to decide the prosecution laches issue, because that would apply to any claims --

THE COURT: Actually, why does the covenant as Mr. Gindler described it today not assure that you'll never have to deal with a patent arising out of the intention claimed in the '275, putting aside the '159 issue, which I said I thought you weren't referring to, or maybe you are. Are you referring to the '159?

MS. PRUETZ: No, I'm referring to the '275.

THE COURT: Well, Mr. Gindler's reliably represented today, if I understand it right, that the plaintiffs will never have any liability on the claims in the '275 or substantially the same claims if there's a reissuance that includes those claims.

MS. PRUETZ: I believe that's correct, your Honor. And if that were the only issue, I would completely agree that the court should not move ahead to decide any part of this case. But I think that there is another issue presented. The invention of the '275 is what's defined in the specification of the patent. And what Columbia is trying to do in the Patent Office in the context of reissue proceedings is get new and different claims off of the same old 24-year old invention. Now, there may be new and different claims that they can